U.S. Department of Housing and Urban Development

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July 08, 2013

Mr. Tom Clifford, Cabinet Secretary
Department of Finance and Administration
The State of New Mexico
Office of the Secretary
180 Bataan Memorial Building
Santa Fe, NM 87501

Subject: The State of New Mexico 2013 Monitoring Response

Dear Secretary Clifford:

We have reviewed the Department of Finance and Administration, Local Government Division's (DFA/LGD) response dated June 10, 2013. The Department of Housing and Urban Development (HUD) has determined that the response was incomplete and does not address all of the findings cited.

As a consequence, as authorized by 24 CFR 570.495, we are hereby notifying DFA/LGD that as of August 1, 2013, we are putting a hold on the administrative funding. This hold will stay in place until such time as the DFA/LGD adequately addresses the findings cited in the review, as well as provide HUD with the requested plan with remediation of issues noted in the review.

Since HUD at this time is not reducing any grant nor taking punitive actions with respect to dollar amounts of any grant, a hearing is not warranted. If however, due to the seriousness of these issues, you would like to meet with the department, please contact us at your earliest convenience.

<u>DFA's General Concerns with the Review Process</u>

1. NMCPD Did not follow CDBG Review and Audit Procedure Guidelines

DFA/LGD cites Section 2-7(C)(2) of HUD's CPD Grant Monitoring Handbook and states that there was limited communication during the review process. In fact, there was constant communication with the Bureau Chief (which has since resigned) and her staff. HUD has enjoyed a very good working and professional relationship with DFA/LGD staff and management during the past 15 years. Only recently with the change in management has HUD encountered issues with non-compliance with inquiries and requests made by the department. If DFA/LGD would have communicated internally, it would have discovered that there was constant communication during the review. Other management was not involved in the monitoring process and the Deputy Director was aware that during the monitoring visit HUD

was instructed to speak with the Bureau Chief. HUD staff conducting the audit provided the Bureau Chief with a list of items during the review in which staff provided "on the spot" adjustments. Each Project Manager was provided a list of items missing from the files and given an opportunity to correct the finding prior to the exit conference. If HUD staff would not have given the staff this opportunity there would have been additional findings to the ones given.

All items on the Monitoring report were discussed at the exit conference conducted on May 6, 2013 in which Secretary Clifford, Ryan Gleason, DFA/LGD Director and Jolene Slowen, DFA/LGD Deputy Director, were in attendance. The findings that were noted in the letter were not items that could be corrected on the spot. DFA/LGD could not provide any additional information to resolve any of the findings at the time of the review.

After HUD communicated the findings and concerns to DFA/LGD at the exit conference, the monitoring report was drafted and mailed to DFA/LGD, as is standard monitoring process. HUD is not required nor does it provide a draft of the report to the Grantee. HUD has 60 days to send the monitoring report, which was done well in advance of that time period. DFA/LGD's allegation that HUD made the monitoring report public is factually incorrect. HUD did not make the monitoring report public; however the monitoring report is part of public record in accordance with the Inspection of Public Records Act. NMSA 1978, Chapter 14, Article 2. A. Therefore, anyone at any time can request access as a citizen.

2. **NMCPD Review of DFA Demonstrated a Lack of Auditor Independence**

HUD reserves the right to assign staff to review and oversight responsibilities. Therefore, DFA/LGD's assertion as to the lack of independence of the reviewers is without merit. However, to address DFA/LGD's concerns HUD will address the concern in regards to the lack of auditor independence. Monica Gonzales was the lead reviewer, and Stephanie Herrera was assisting. As Stephanie Herrera was not the lead reviewer, she was not required to be identified on the monitoring letter.

Monica Gonzales was clearly introduced as the lead reviewer at the exit conference. It is untrue that Stephanie Herrera was serving as the lead, as she was clearly identified as assisting Monica Gonzales.

While Stephanie Herrera was employed at DFA/LGD she did serve as the lead project manager on the Neighborhood Stabilization Program (NSP). Therefore, she did not review the NSP programs during the HUD monitoring review. In addition, the Community Development Block Grant (CDBG) files that were audited were City of Deming, Town of Mesilla, Guadalupe County, San Miguel County, Village of Ft. Sumner, De Baca County, City of Portales, City of Carlsbad, City of Lordsburg, Town of Taos, Village of Loving, and Village of Mosquero. Stephanie Hererra did not oversee the above CDBG listed projects. 12 months prior to the review Stephanie Herrera was only responsible for Santa Fe County and Bernalillo County and the municipalities that reside in them. Attached is DFA/LGD's CDBG and Legislative Map (effective 9/7/2011), showing the counties and municipalities Stephanie Herrera was responsible for.

Furthermore, for your edification, the definition of HUD's conflict of interest is at 24 CFR

570.611(b): Conflicts prohibited. The general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

Stephanie Herrera nor her husband Paul Herrera have any financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties. Therefore, referencing Paul Herrera as a possible conflict of interest is futile.

3. NMCPD Has Not Properly Communicated the Time Period Covered and Scope of the Review

HUD sent an email before the monitoring review to Dolores Gonzales on March 28, 2013 stating exactly which projects HUD would be reviewing. It clearly stated that it covered 2011 and 2012 projects. Furthermore, in the monitoring notification letter to the State, HUD requested 2012 supporting documentation. As stated above, if DFA/LGD had communicated internally, DFA/LGD would have known that the former Bureau Chief was very aware of the time period being reviewed, as well as the scope.

Furthermore, HUD reserves the right to review any and all aspects of HUD programs (including section 108) as cited at 24 CFR 570.490(c)(1):
Representatives of HUD, the Inspector General, and the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, or property pertaining to the administration, receipt and use of CDBG funds and necessary to facilitate such reviews and audits.

DFA Responses to Findings and Concerns

Finding 1
The State of New Mexico was negligent in its oversight and failed to meet Office of Management and Budget (OMB) requirements, Treasury regulations, and HUD regulations for Cash Management.

DFA/LGD's assertion that holding on to funds that should have been returned for three years as "slow" is unacceptable. It is irrelevant that DFA/LGD was working on correcting the problem (however it was still not corrected as of time of review). DFA/LGD held on to these funds for three years, therefore a finding was warranted.

As stated above, HUD did not make the monitoring report public. However, the monitoring report is part of public record so anyone at any time can request access as a citizen. Regarding

DFA/LGD's statement that only .037% of the total funds received were not returned is inconsequential. It does not matter how much the percentage of the amount was not returned, the fact is that it was not returned.

Finding 1 is conditionally closed pending receipt by HUD of the Master Calendar of all CDBG deadlines, and policies regarding recaptured funds and program income, as refrenced in DFA/LGD's monitoring response.

Finding 2
The State of New Mexico has been untimely in distributing program income.

HUD Notice CPD 13-03 issued April 29, 2013, states that "amounts from prior year allocations, recaptured funds and program income are not included in evaluating basic compliance with distributing the annual allocation. Field Offices will <u>continue to separately review the timely distribution of recaptured funds and program income</u> as required at 24 CFR 570.494(b)(2)".

DFA/LGD stated "the review is unclear about how to measure the amount of time appropriate to determine compliance" and references the 2013 HUD CPD Memo13-03. The standards on budgeting program income have been in long existence. Former DFA/LGD staff were aware of the standards for program income. Attached is a HUD CPD Memo dating back to 2006 that provided standards for program income. Therefore, DFA/LGD should have had a clear understanding on how to determine this compliance standard, since the standard is not a new standard.

DFA/LGD also references additional delays that resulted in the program income amendment being delayed. One such reference is a letter from Stephanie Herrera dated September 26, 2011. The letter was sent twenty-three (23) months prior to the amendment being sent to the City of Albuquerque. In addition, DFA/LGD references an additional delay with the NSP3 contractor in 2010 or early 2011. Assuming the later date of early 2011 is when the issue was settled out of court, DFA/LGD is stating that the contractor issue in 2011 delayed the grant agreement by thirty-one (31) months. DFA/LGD's response also indicated that an additional circumstance affecting the timing of the amendment to the City was the fire that happened to the Atrisco Multi Family Property. As the monitoring response stated, the fire was in February of 2012, eighteen (18) months prior to the amendment being provided to the City of Albuquerque. Furthermore, DFA/LGD stated HUD provided notification by e-mail in February of 2011 of the concentration on Single Family homes; this is thirty (30) months prior to the amendment being sent to the City of Albuquerque. Therefore, the justifications DFA/LGD stated as the reasons for delay in the program income amendment to the City of Albuquerque are unacceptable to HUD.

It is inefficient and inconceivable that DFA/LGD would not have policies in place that ensure efficient and timely use and distribution of emergency funding.

While DFA/LGD has a right to ensure all contracts are legal, the process needs to be effective, efficient, and timely. During the course of the review performed by HUD, it became apparent per interviews with DFA/LGD staff, that delays in executing contracts were a direct result of the legal division not prioritizing this work. The end result is the delay of executing contracts with local governments and providing required amendments. These delays were verified by local

governments who complained directly to HUD that contracts were delayed in an inordinate time.

Finding 2 is conditionally closed pending receipt by HUD of the Master Calendar of all CDBG deadlines, and policies regarding recaptured funds and program income.

Finding 3
The State of New Mexico has not been responsive to HUD.

HUD's role under the State CDBG program is to ensure State compliance with Federal laws, regulations and policies. Therefore, HUD may consider relevant information on the State's performance gained from other sources, including litigation, citizens' comments, and other information provided by the State, in accordance with 24 CFR 570.493(b). In addition, in accordance with 24 CFR 570.490(c), representatives of HUD, the Inspector General, and the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, or property pertaining to the administration, receipt and use of CDBG funds and necessary to facilitate such reviews and audits. Therefore, HUD, as the funding agency, has the right to request additional information and/or documentation to facilitate reviews and audits in order to determine compliance with laws, regulations and policies.

The State claims in the monitoring response that HUD was internally inconsistent in regards to Findings 1, 2, and 3 and that Finding 3 was based upon a standard only known to HUD. The Code of Federal Regulations (CFR) is the codification of the general and permanent rules and regulations (sometimes called administrative law) published in the Federal Register by the executive departments and agencies of the federal government of the United States. Every regulation has an enabling statute, or statutory authority. The CFR contains regulations, which spell out in further detail how the executive branch will interpret the law. The United States Code (U.S. Code) is a codification of legislation, while the CFR serves as administrative law. Administrative law exists because the Congress often grants broad authority to executive branch agencies to interpret the statutes in the U.S. Code (and in uncodified statutes) which the agencies are entrusted with enforcing. Congress does not write statutes that cover every possible detail. Therefore, since each possible detail in a CFR is not covered, HUD as the executive branch is able to interpret the controlling regulations and apply the same regulation to multiple findings.

HUD has never requested a timeline for the "implementation of the first time Section 108 loan guarantee program" or requested an "overly rapid timeframe" as mentioned in the monitoring response. The timeline requested was merely for DFA/LGD to notify HUD when we could expect to receive the signed Section 108 loan agreement from the Governor and the special conditions that are contained in the funding agreement between HUD and the State of New Mexico; specifically the following condition: "the State-assisted public entity shall not incur any obligations to be paid with guarantee loan funds prior to the receipt of a written determination from the HUD New Mexico Field Office that (i) the activity meets the eligibility requirements of 24 CFR 570.703. (ii) each eligible activity to be undertaken or supported with loan guarantee funds will meet the national objective requirements of 570.208 and, (iii) the applicable public benefit standards will be met, in accordance with 570.209 (b)". DFA/LGD should not have had difficulty providing the above items, even if the section 108 program is new to the State of New Mexico. The CDBG rules and requirements apply for the purposes of determining eligibility under the Section 108 Loan Guarantee Program. DFA/LGD has been administering the CDBG

program for approximately 20 years. During the exit interview with DFA/LGD, HUD stated we would be willing to work with DFA/LGD in regards to the timeliness in the event that DFA/LGD was unable to meet the timeline requested.

DFA/LGD's response to the monitoring letter stated that an e-mail was sent to HUD in regards to the City of Albuquerque's NSP budget. However, DFA/LGD omitted that on April 16, 2013, Stephanie Herrera e-mailed DFA/LGD with the following questions which were never responded to (see the attached e-mail) *:

"Can you please provide me a status as to where the State is with NSP1 & NSP3?

- Has the State decided to transfer NSP to MFA, if so by when?

- Has the State completed an Amendment for the City of Albuquerque to use program income, if so, when will it be completed?

- If the State has decided to retain the program income, can you please let me know when you plan on having it re-distributed to another area of greatest need?"

* Please note the original request for the bulleted items was made on December 18, 2012 in a letter addressed to the Governor of New Mexico.

In addition, DFA/LGD stated in the monitoring response that no obligations have been made to be paid with Section 108 Loan Guarantee funds, and DFA/LGD was in compliance with Special Condition contained in the funding agreement. However, during the Community Development Council (CDC) meeting on December 6, 2011, the CDC approved the Section 108 applications. The draft minutes of the CDC meeting (provided by DFA/LGD to HUD) state the following:

"Mr. Ryan moved to approve a $10 Million HUD Section 108 Loan Guarantee to Atlantis Cyberspace, Inc.., and Mr. Ryan moved to approve a $10 million HUD Section 108 Loan Guarantee to REITech Global, LLC..."

The term "obligated and announced to" found in the CPD Notice13-03 is defined as the date on which a state officially announces the selection and award of grants to its units of general local government by means of any official letter, press release, news media announcement, public notice, or official notice of award that the state may use to notify its localities and citizens that a grant has been awarded. Note that this definition of "obligated" is not the same as a business definition which establishes a legal duty for payment. For the purpose of this regulation, it is more appropriately classified as a "commitment" or "reservation" which provides for budgetary control of the grant funds. Therefore, on December 6, 2012, DFA/LGD obligated (committed/reserved) funds to be paid with Section 108 loan guarantee funds.

As an additional point of clarification HUD did not "request" that DFA/LGD complete the Section 108 Environmental review. DFA/LGD's Exhibit E (e-mail between Stephanie and DFA January 23, 2013 (attached)) provided by DFA/LGD states that the State of New Mexico "can conduct the environmental review if the State choses to do so."

Additionally, HUD received an email on July 18, 2013 (see attached) from the New Mexico Mortgage Finance Authority (MFA), outlining concerns it had regarding DFA/LGD. MFA asserts that DFA/LGD has been unresponsive regarding its NSP1 contract which expired on June 20, 2013. MFA sent numerous requests to DFA/LGD for an amendment or extension to the contract. This has not been completed, and MFA has two homes with funds committed. No action can be taken on these homes until the contract is extended. Additionally, MFA is about to undergo an audit and these issues need to be cleared up prior to the audit.

Therefore, the response provided by DFA/LGD to HUD is considered un-satisfactory and Finding 3 will remain open until DFA/LGD provides the Local HUD office with the following items:

- **Activity descriptions for the Section 108 program so that the local HUD can make a written determination of the following:** ***(i) the activity meets the eligibility requirements of 24 CFR 570.703. (ii) each eligible activity to be undertaken or supported with loan guarantee funds will meet the nation objective requirements of 570.208 and, (iii) the applicable public benefit standards will be met, in accordance with 570.209 (b).***

- **DFA/LGD must provide the Local HUD office with a written determination as to what is happening with the Neighborhood Stabilization Programs. Is DFA/LGD going to continue to administer the Neighborhood Stabilization Programs, or will the programs be transferred to the New Mexico Mortgage Finance Authority? If the programs will be transferred, DFA/LGD must provide HUD with a detailed management plan with a plan outlining how and by when the transfer will be made.**

In addition, DFA/LGD must certify that it will be responsive to HUD's requests, by e-mail, phone, letters, and in all communication.

Finding 4
HUD has received numerous complaints regarding DFA/LGD's performance in administering HUD grants.

As stated above, Congress does not write statutes that cover every possible detail. Therefore, since each possible detail in a CFR is not covered, HUD as the executive branch is able to interpret the controlling regulations.

The standards violated were cited in the monitoring letter and will not be repeated. The local governments requested that they remain anonymous, due to fear of repercussions by DFA/LGD. HUD will honor the request that the local governments remain anonymous. However, HUD has compiled a list of complaints without the local government being specifically identified (please note HUD paraphrased the comments).

1. Pay Requests are very slow.
2. Grant agreements took too long, and no longer eligible for threshold.
3. Grant agreements took too long, the amendments taking too long, and management does not have experience with HUD regulations.

4. Lack of communication between directors and upper management, DFA/LGD does not visit communities, and grant agreements are taking too long.
5. Reimbursement of payments take too long.
6. Legal Review took too long, will not be able to meet threshold, and will affect future funding.
7. Waited months for an amendment, hold up on change orders, staff turnover to hard. DFA needs to stop changing items mid process, do it for new grants not middle process of other grants.
8. Communication is limited to grantees from DFA.
9. Grant agreements given out to late will not be able to apply next year due to threshold.
10. DFA has too much staff turnover, it is too hard on the communities.
11. DFA has too many paper heavy requirements, program is getting too complex to administer. Staff turnover is too hard, hard for communities to get use to new project managers, had 5 project managers in six years.
12. Pay Requests taking too long to process, staff turnover hard, unaware of project manager, lack of communication when new staff take over.
13. Grant agreements took too long.
14. Staffs turnover is hard, budget approval took too long to get approved, waited over 3 months.
15. Grant agreements took too long, will not be able to meet threshold due to grant agreements. No problems with Staff but problems with management.
16. Review of contract documents took too long.
17. Very slow with grant agreements, going to miss the window of opportunity of construction because of the snow, won't be able to meet threshold. Pay Request taking too long.
18. Reimbursements taking longer than normal, been waiting over 3 months for payment, the staff turnover is too hard on communities.
19. Reimbursements taking too long.
20. Staff turnover is to hard, get used to someone and then someone else comes in.
21. DFA is unresponsive, e-mailed multiple times and never received a response, grant agreements took too long.
22. DFA is being slower and making excesses about staff and that everyone has to deal with it. Pay Requests taking too long and staff turn over to hard.
23. DFA has not been responsive to Program income amendment.
24. DFA has not been responsive to amendments regarding budgets.

Additionally, MFA has sent in a complaint regarding DFA/LGD inaction and unresponsiveness, as described above in Finding 3.

Regarding NSP3 amendments being delayed, refer to the attached letter sent on June 11, 2013, as to the harm that was caused.

In a letter dated December 31, 2012, DFA/LGD stated to HUD "as we discussed in the December 5 meeting, LGD staff is preparing recommended guidelines for the Community Development Council to insure that applicants for future awards are not negatively impacted by one-time delays in this year's award cycle." Therefore, HUD's request to provide policies and procedures should be considered justifiable since DFA/LGD has had eight (8) months to work on

these policies as stated in the December 31, 2012 letter. Policies and procedures are created to clearly establish rules and regulations to improve the department, which is necessary to the administration of CDBG grants.

In accordance with 24 CFR 570.495, a state's plan for corrective action must be to the satisfaction of HUD. The response provided to HUD in regards to F inding 4 does not address the corrective action identified in the Monitoring Report provided to DFA/LGD.

Finding 4 will remain open until DFA/LGD provides the Local HUD office with written policies and procedures on how the State will eliminate the time elapsing between Grant Agreements, Grant Amendments, and Request for Payments for both the CDBG and NSP Programs. The Request for Payment procedures must be in accordance with the Cash Management Improvement Act of 1990.

<u>Concerns</u>

Concern No. 1
Per State CDBG requirements, all grants must be monitored once a year for the life of the grant. The first monitoring review has to be completed within one year of grant execution. Per review of the DFA/LGD, it was determined that several monitoring reviews were late.

A concern is a deficiency in program performance that is not based on a statutory, regulatory, or other program requirement that may require revision of existing practices and procedures in order to enhance the effectiveness of organization's operations and possibly eliminate future findings. <u>All concerns are advisory and verification of corrective action is not required.</u>

However, since DFA/LGD wants specific instances, they are outlined below (dates identified from the monitoring spreadsheet, not the actual files):

- Quay County (11-C-08) should have been monitored by 9/12/2012, but was not monitored.
- Village of Chama (11-C-09) should have been monitored by 9/19/2011, but was not monitored.
- City of Portales (11-C-10) should have been monitored by 6/18/2012, but was not monitored until 12/26/2012.
- City of Clovis (11-C-13) should have been monitored by 8/16/2012, but was not monitored.
- City of Deming (11-C-23) should have been monitored by 7/1/2012, but was not monitored until 11/16/2012.
- Guadalupe County (11-C-26) should have been monitored by 7/2/2012, but was not monitored.
- Torrance County (11-C-27) should have been monitored by 7/1/2012, but was not monitored.
- City of Hobbs (11-C-31) should have been monitored by 8/2012, but was not monitored until 1/8/2013.
- City of Carlsbad (11-C-33) should have been monitored by 8/2012, but was not

monitored until 10/23/2012.

- Town of Clayton (11-C-36) should have been monitored by 8/18/2012, but was not monitored until 9/13/2012.
- City of Texico (11-C-45) should have been monitored by 8/2/2012, but was not monitored.
- Taos County (11-C-46) should have been monitored by 8/2/2012, but was not monitored until 1/14/2013.
- Villager of Ft. Sumner (11-C-47) should have been monitored by 7/28/2012, but was not monitored until 12/20/2012.
- De Baca County (11-C-48) should have been monitored by 7/28/2012, but was not monitored until 12/20/2012.

Concern No. 2
Review of the NSP3 program revealed that the State of New Mexico is slow in meeting the LH25 requirement which states that "No less than 25 percent of the funds shall be used to house individuals and families whose incomes do not exceed 50 percent of area median income." As of the time of the review the State has 13% toward this requirement, with over 86% of the grant drawn. The grant expires in March 2014.

As stated above, all concerns are advisory and verification of corrective action is not required. HUD acknowledges that States throughout the Country will have a difficult time meeting the LH25% requirement if they are solely focusing on single family homes. However, regardless of the difficulty, DFA/LGD is still obligated to meet the required set aside.

Concern No. 3
DFA/LGD has lost most of its management staff that has knowledge and experience with HUD programs. Sam Ojinaga who was the Deputy Director of the Local Government Division was removed after 14 years of experience. Dolores Gonzales, Community Development Bureau Chief, is leaving after 16 years of experience. Barbara Romero, Assistant Bureau Chief, is leaving after 9 years of experience.

On September 25, 2012, HUD was notified that the DFA/LGD's Deputy Director Sam Ojinaga was no longer responsible for the direct oversight of the CDBG and NSP programs. At the time of the review Sam Ojinaga was not an active member of the Community Development Bureau. On October 19, 2012, HUD notified DFA/LGD that we were concerned with recent staff changes. In the response dated November 9, 2012, DFA/LGD responded that it was "aware of the issues and concerns addressed in the letter." DFA/LGD did not mention that Sam Ojinga was a continued valuable source of institutional knowledge at the time the initial concern was raised by HUD. In addition, during the December 5, 2012 meeting held with DFA/LGD, HUD addressed the concerns of staff turnover. Again, HUD was never notified Sam Ojinaga was being utilized on the CDBG and NSP Programs.

HUD is required to determine the degree of grantee risk based on the extent to which the program participant has the capacity to carry out HUD programs according to established requirements. The basis for HUD's rating is derived from information that could be obtained from, but not limited to the following: consideration of the knowledge, skills and ability of program staff and the grantee's administrative capacity to manage the grant, including: eligibility

of activities and recipients; or problems such as: lack of progress in implementing activities, change in staff during the last year, and lack of experience with Federal grants or project activities.

Additionally, audits and related reporting systems can be considered, including but not limited to: Consolidated Plans, Consolidated Annual Performance and Evaluation Reports, Performance and Evaluation Reports, Technical Assistance Plans, Integrated Disbursement Information System, Disaster Recovery Grant Reporting, and other reporting mechanisms. Environmental Compliance, Relocation and Acquisition Policies Compliance, and Flood Insurance Protection Compliance may also be considered. Therefore, based on HUD's experience this concern <u>is not</u> inappropriate, highly subjective, personal, or uncalled for.

HUD recognizes DFA/LGD has lost numerous staff (approximately six Project Managers) and management (approximately three management positions directly overseeing the CDBG and NSP Programs) over the last 2 years. In October of 2012, HUD notified DFA/LGD that our office was willing to set it up with a Technical Assistance trainer to help build capacity to administer the CDBG and NSP programs. HUD did not hear back from DFA/LGD until April of 2013 in regards to the training. Currently HUD is in the process of trying to arrange for a Basic CDBG training for both staff and management.

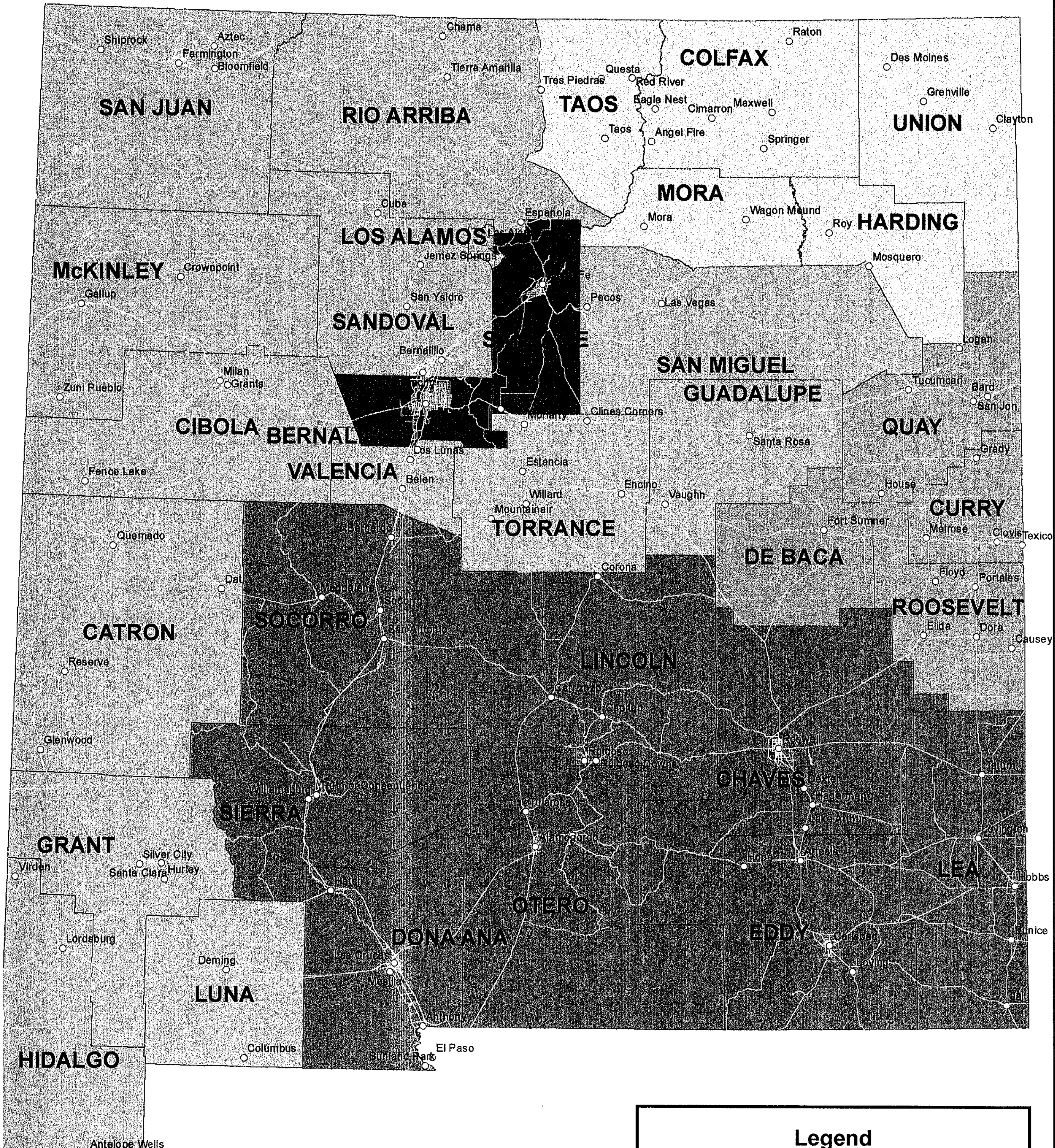
Conclusion
Until DFA/LGD provides a response that is satisfactory to HUD, the above mentioned findings will remain open and all administrative funds will remain on hold.

Sincerely,

Frank Padilla
Director

cc: Honorable Susana Martinez, Governor
Honorable Thomas Udall, United States Senator
Honorable Martin Heinrich, United States Senator
Honorable Ben Ray Lujan, United States Representative
Honorable Steve Pierce, United States Representative
Community Development Council

CDBG and Legislative Oversight Areas



Thomas Clifford, Secretary	505-827-4985
Sam Ojinaga, Acting Director	505-827-8073
Dolores Gonzales, Bureau Chief	505-827-4972
Barbara Romero, Asst. Bureau Chief	505-827-4602
Shawntae Barela, Administrative Assistant	505-827-4950

New Mexico Department of Finance & Administration

Legend

COUNTY PROJECT MANAGER

- ARIANA VIGIL
- DANIELLE VALDEZ
- FORREST CLANCY
- GERALD GARCIA
- PAUL HERRERA
- RYAN SERANO
- SIMON SAIZ
- STEPHANIE ROMERO

CHDBGvSept11.mxd 9/7/2011

U.S. Department of Housing and Urban Development
Community Planning and Development

Special Attention of:

All Secretary's Representatives
All State/Area Coordinators
CPD Division Directors

Notice: CPD 06-12

Issued: November 2, 2006
Expires: November 2, 2007

Cross References: 24 CFR 570

SUBJECT: Timely Distribution of State CDBG Funds

I. Purpose

This Notice replaces CPD Notice 94-26 and reiterates HUD's policy and standards for the timely distribution of Community Development Block Grant (CDBG) funds by States. The Notice also provides a summary report of the states' performance in meeting the timely distribution requirements established by regulation for the five program years 2000 through 2004.

II. Statutory and Regulatory Requirements

The Housing and Community Development Act of 1974 as amended [section 104(e)(2)] requires that HUD determine "whether the State has distributed funds to units of general local government in a timely manner." This is the statutory basis for requiring States to meet a timeliness standard in distributing CDBG funds to units of general local government under their jurisdiction.

HUD regulations as established in 24 CFR 570.494, Timely Distribution of Funds by States, define the state's distribution of CDBG funds as timely if "All of the state's annual grant (excluding state administration) has been obligated and announced to units of general local government within 15 months of the state signing its grant agreement with HUD." The exclusion for state administration includes both administrative expenses and technical assistance to local governments and nonprofit program recipients. The regulation also encourages states to obligate and announce 95 percent of funds within 12 months of the state signing its grant agreement with HUD.

Recaptured funds and program income must also be expeditiously obligated and announced in order to meet the timeliness requirement. Special attention should be

directed to program income to ensure that an amount equal to the amount received each year is budgeted for and committed to local governments.

Definitions:

The term "obligated and announced to" means the date on which a state officially announces the selection and award of grants to its units of general local government by means of any official letter, press release, news media announcement, public notice, or official notice of award that the state may use to notify its localities and citizens that a grant has been awarded. The date of such an announcement will be used to measure compliance with the 15-month time period.

III. Action

Field Offices are responsible for monitoring state compliance with the timely distribution requirement. Field Offices will review the total amount of funds obligated and announced to local recipients from the State CDBG program allocation through the end of the 15-month period. Amounts from prior year allocations, recaptured funds and program income are not included in evaluating basic compliance with distributing the annual allocation. Field Offices will continue to monitor the timely distribution of recaptured funds and program income. To demonstrate compliance with the timely distribution requirement, the total funds obligated and announced should equal the total available after subtracting the allowance for state administration and the technical assistance set-aside. The State and Small Cities Division in HUD Headquarters will review data from LOCCS and the Grants Management Process system (GMP) 15 months after the beginning of each state's program year and request Field Offices to verify that states have obligated and announced funds in compliance with the timely distribution requirement. Note that current plans for IDIS re-engineering include automating the collection of timely distribution data, which will aid in monitoring compliance with this statutory requirement.

Each state must meet the regulatory requirement for timely distribution. States that do not meet the standard of obligating and announcing 100 percent of their grants within 15 months of the HUD award date are in noncompliance and are subject to a finding. However, the required corrective action should be proportionate to the violation incurred. For example, if less than 1 percent of a state's grant remains undistributed at 15 months and the evidence suggests that this will be committed quickly, it may be appropriate to require no further action. If the Field Office finds that performance is more deficient than this example or the record shows repeated findings of noncompliance in this area, the Field Office will give the state an opportunity to contest the finding and will request a plan for corrective action. Such plan should address how the state will distribute any outstanding prior year's balance within the current program year as well as how it will fully distribute the current program year's funds within the timely distribution period.

If the state's response or corrective plan is not satisfactory to HUD, the Field Office may take additional action as specified in 24 CFR 570.495. If the state fails to adequately respond to any corrective or remedial actions, the regulations at 24 CFR 570.496 provide

for a hearing and the imposition of additional remedies including financial and civil actions.

IV. Report Results

Information provided by HUD Field Offices shows 25 of 50 states met the standard of obligating and announcing 100 percent of their grants to local governments within 15 months of award of funds by HUD for all 5 years from FY 2000 through FY 2004. Six additional states distributed 99% or more of their grant within 15 months in all 5 years. One state failed to meet the 100 percent requirement in all 5 years. Five states distributed less than 90% of their funds in at least 1 year.

The Attachment to this Notice lists the individual performance by states on the timely distribution of funds at the end of the 15 months for grants awarded in federal fiscal years 2000 through 2004. This attachment includes a table summarizing the number of states by percent of their Grant Amount Under Contract 15 months after award.

Please contact James McCann at (202) 708-1322, Extension 2180, should you have any questions regarding this notice.

Attachment

Notices are available online at:

http://www.hud.gov/offices/cpd/communitydevelopment/rulesandregs/index.cfm

Attachment

	% of Funds Distributed after 15 months				
State	FY2000	FY2001	FY2002	FY2003	FY2004
ALABAMA	99.50%	100.00%	100.00%	100.00%	100.00%
ALASKA	89.72%	100.00%	100.00%	100.00%	100.00%
ARIZONA	100.00%	100.00%	100.00%	100.00%	100.00%
ARKANSAS	100.00%	100.00%	100.00%	100.00%	100.00%
CALIFORNIA	100.00%	100.00%	100.00%	100.00%	100.00%
COLORADO	100.00%	100.00%	121.92%	100.57%	100.27%
CONNECTICUT	100.00%	100.00%	97.60%	100.00%	100.00%
DELAWARE	100.00%	100.00%	100.00%	100.00%	100.00%
FLORIDA	100.00%	100.00%	100.00%	101.15%	98.67%
GEORGIA	98.41%	100.00%	98.85%	99.25%	99.90%
IDAHO	100.00%	100.00%	100.00%	100.00%	100.00%
ILLINOIS	100.00%	100.00%	95.21%	100.00%	100.70%
INDIANA	100.00%	100.00%	100.00%	100.00%	102.44%
IOWA	100.00%	100.00%	100.00%	100.00%	100.00%
KANSAS	96.44%	100.00%	95.09%	100.00%	99.60%
KENTUCKY	100.00%	100.00%	100.00%	100.00%	100.00%
LOUISIANA	100.00%	100.00%	97.55%	100.00%	100.00%
MAINE	100.00%	100.00%	100.00%	101.85%	100.00%
MARYLAND	100.00%	100.00%	100.00%	100.00%	100.00%
MASSACHUSETTS	no report	97.88%	97.29%	100.00%	100.00%
MICHIGAN	95.96%	100.00%	100.00%	85.03%	99.60%
MINNESOTA	99.12%	99.98%	100.00%	100.00%	100.00%
MISSISSIPPI	100.00%	100.00%	100.00%	100.00%	100.00%
MISSOURI	98.62%	100.00%	100.00%	100.00%	100.00%
MONTANA	100.00%	100.00%	100.00%	100.00%	100.00%
NEBRASKA	100.00%	100.00%	100.00%	100.00%	100.00%
NEVADA	100.00%	100.00%	99.95%	100.00%	96.24%
NEW HAMPSHIRE	100.00%	100.00%	no report	100.00%	100.00%
NEW JERSEY	95.15%	99.09%	100.00%	100.00%	100.00%
NEW MEXICO	100.00%	100.00%	100.00%	99.71%	99.93%
NEW YORK	100.00%	100.00%	100.10%	90.03%	79.84%
NORTH CAROLINA	100.00%	100.00%	100.00%	100.00%	100.00%
NORTH DAKOTA	100.00%	100.00%	100.00%	100.00%	100.00%
OHIO	98.22%	99.70%	97.64%	99.16%	99.28%
OKLAHOMA	100.00%	100.00%	100.00%	100.00%	100.00%
OREGON	100.00%	100.00%	100.00%	100.00%	100.00%
PENNSYLVANIA	100.00%	100.00%	100.00%	100.00%	100.00%
PUERTO RICO	100.00%	100.00%	100.00%	100.00%	100.00%
RHODE ISLAND	100.00%	100.00%	100.00%	98.76%	98.67%
SOUTH CAROLINA	100.00%	100.00%	88.35%	92.73%	100.00%
SOUTH DAKOTA	100.00%	100.00%	27.88%	63.42%	81.65%
TENNESSEE	100.00%	100.00%	100.00%	100.00%	100.00%
TEXAS	100.00%	100.00%	100.00%	100.00%	100.00%
UTAH	100.00%	100.00%	100.00%	100.00%	100.00%
VERMONT	99.14%	99.48%	100.00%	100.00%	100.00%
VIRGINIA	100.00%	100.00%	100.00%	100.00%	100.00%
WASHINGTON	100.00%	100.00%	100.00%	100.00%	100.00%
WEST VIRGINIA	100.00%	100.00%	100.00%	100.00%	100.00%
WISCONSIN	100.00%	100.00%	98.48%	100.00%	100.00%
WYOMING	99.83%	100.00%	99.68%	99.84%	99.97%

Percentage distribution achieved by states by FY:					
	2000	2001	2002	2003	2004
100%	38	43	37	41	38
99%	4	6	2	4	7
95-98%	6	1	8	1	3
90-94%	0	0	0	2	0
80-89%	1	0	1	1	1
Under 80%	0	0	1	1	1
No data	1	0	1	0	0
	50	**50**	**50**	**50**	**50**

Achieved 100% standard all 5 years:	25
Failed 100% standard in at least 1 yr:	25
Failed 100% standard all 5 years:	1
Distributed under 90% in at least 1 yr:	5
Distributed under 90% all 5 years:	0

Note: Some states have included Program Income in their reports resulting in amounts distributed greater than 100%.
Shaded entries are below 100%. Shaded entries shown as 100% are actually slightly less but display as 100% due to rounding.

Herrera, Stephanie M

From:	Herrera, Stephanie M
Sent:	Tuesday, April 16, 2013 11:32 AM
To:	'Slowen, Jolene M, DFA'
Cc:	'Gonzales, Dolores C., DFA'; Padilla, Frank; 'Gleason, Ryan, DFA'; 'Jackson, Rebecca, DFA'; 'Saiz, Simon P, DFA'; Gonzales, Monica M
Subject:	RE: NSP Monitoring

Hi Jolene,

Now that the NSP Staff has been informed of the confusion with the "Substantial Amendment" and "Grant Agreement Amendment," can you please answer the questions that were asked in my original e-mail.

- Can you please provide me a status as to where the State is with NSP1 & NSP3?
- Has the State decided to transfer NSP to MFA, if so by when?
- Has the State completed an Amendment for the City of Albuquerque to use program income, if so, when will it be completed? *(the original request to use program income from the City of Albuquerque was submitted over a year and a half ago).*
- If the State has decided to retain the program income, can you please let me know when you plan on having it re-distributed to another area of greatest need?

Thanks,

Stephanie M. Herrera
Community Planning and Development Representative
Office of Community Planning and Development

Department of Housing and Urban Development
500 Gold Avenue SW, Suite 7301
P.O. Box 906
Albuquerque, NM 87103-0906
Ph: (505) 346-7341
Fax: (505) 346-6604
Stephanie.M.Herrera@hud.gov

From: Slowen, Jolene M, DFA [mailto:JoleneM.Slowen@state.nm.us]
Sent: Friday, April 12, 2013 4:55 PM
To: Herrera, Stephanie M
Cc: Gonzales, Dolores C., DFA; Padilla, Frank; Gleason, Ryan, DFA; Jackson, Rebecca, DFA; Saiz, Simon P, DFA
Subject: RE: NSP Monitoring

Good Afternoon Stephanie,

In your follow up email sent 4/10/13, you requested clarification regarding the City of Albuquerque and its use of program income. To answer your question, yes, we will need to execute a grant agreement amendment with the City of Albuquerque to allow for the use of program income.

We acknowledge the fact that there is some confusion in the nomenclature of the amendments with our sub-grantees and have already addressed that issue with NSP staff. The following is a brief explanation of why there was confusion with the "grant agreement amendment" title and the "substantial amendment" title, what our processes were in the past for amending our agreements, and what our processes will be moving forward.

On March 19, 2013, the City requested technical assistance in reference to requesting additional administration funds from program income received. The City was informed that in order to process this request, it would need to submit the "Substantial Amendment" (State of New Mexico Action Plan Substantial Amendment) via email, identifying the requested changes with an assigned color, as had been done in the past. Because of lost data at the City offices due to server issues, the City did not have electronic versions of previous "Substantial Amendments" which was provided to them.

The most recent budget adjustments have been conducted as follows: Once DFA/LGD receives this "Substantial Amendment" request from the City, it is reviewed to verify that a substantial amendment according to 24 CFR 91.505 is or is not required. Once the amendment is approved by DFA/LGD it is then emailed to the Albuquerque HUD Office for approval. Once this has been approved by HUD, NSP staff would make the budget adjustment in DRGR.

This process was put into place on 7/1/10 in amendment #3 to the City's grant agreement. This was due to the 18 month obligation deadline and expenditure deadline approaching. Grant agreement amendment #3 did away with the redundancy and lengthy process of having the City submit the "Substantial Amendment," and then submitting a grant agreement amendment request upon approval of the "Substantial Amendment."

Each of our sub grantees' agreements were amended to incorporate this same process.

DFA/LGD is currently awaiting the "Substantial Amendment" to be submitted by the City incorporating the use of additional administration funds from program income received, which will be reviewed by NSP staff. We do not expect it to require the procedures in 24 CFR 91.505 and if that determination is made it will be submitted as soon as possible to HUD for review.

As stated before, NSP staff has been informed of the confusion with the "Substantial Amendment" title. Moving forward, we will put into place the necessary processes to amend our agreements with our sub grantees as well as review their requests to ensure the requirements stated in 24 CFR 91.505 are followed.

If you require any additional information please feel free to contact me.

Jolene M. Slowen
Deputy Director
Local Government Division
Department of Finance and Administration
Bataan Memorial Building, Rm 202
Santa Fe, NM 87503

From: Herrera, Stephanie M [mailto:Stephanie.M.Herrera@hud.gov]
Sent: Wednesday, April 10, 2013 10:12 AM
To: Slowen, Jolene M, DFA
Cc: Gonzales, Dolores C., DFA; Padilla, Frank; Gleason, Ryan, DFA; Jackson, Rebecca, DFA
Subject: RE: NSP Monitoring

Good Morning Jolene,

Can you please clarify a few items for me, in your e-mail below you mention that the City of Albuquerque asked for technical assistance in reference to the Substantial Amendment for use of program income. According 24 CFR 91.505 (a) Amendments to the plan. The jurisdiction shall amend its approved plan whenever it makes one of the following decisions: (1) To make a change in its allocation priorities or a change in the method of distribution of funds. (2) To carry out an activity, using funds from any program covered by the consolidated plan (including program income), not previously described in the action plan; or (3) To change the purpose, scope, location, or beneficiaries of an activity. The State of New Mexico identified and requested a waiver with the original NSP1 Substantial Amendment that requested that rental program income be retained in the individual project in order to continue to long term financial feasibility and any program income generated from the Sale of NSP properties be allowed to be retained to continue financing properties. Therefore, a Substantial Amendment is not required at this time to use program income generated by the City of Albuquerque for NSP1 since the original Substantial Amendment that was approved by HUD acknowledged that program income generated would be used to continue financing NSP Properties. What I believe you meant to say is the State planning on completing a Grant Agreement Amendment? If this is correct please let me know.

In addition, you mention that you are waiting for the Amendment from the City of Albuquerque to review, approve and send to HUD, did the State already create and send a grant amendment (or substantial amendment)to the City of Albuquerque to review and send back to the State? Or is the City creating the a grant amendment (or substantial amendment) and sending to the State for review?

Thanks for clarifying the items above.

Stephanie M. Herrera
Community Planning and Development Representative
Office of Community Planning and Development

Department of Housing and Urban Development
500 Gold Avenue SW, Suite 7301
P.O. Box 906
Albuquerque, NM 87103-0906
Ph: (505) 346-7341
Fax: (505) 346-6604
Stephanie.M.Herrera@hud.gov

From: Slowen, Jolene M, DFA [mailto:JoleneM.Slowen@state.nm.us]
Sent: Tuesday, April 09, 2013 9:30 AM
To: Herrera, Stephanie M
Cc: Gonzales, Dolores C., DFA; Padilla, Frank; Gleason, Ryan, DFA; Jackson, Rebecca, DFA
Subject: RE: NSP Monitoring

Good Morning Stephanie –

Thank you for your questions. Since the monitoring review involved the NSP1 program, be advised that the City of Albuquerque asked for technical assistance in reference to the Substantial Amendment for use of the program income. DFA/LGD provided that assistance. We are waiting for the Amendment from the City of Albuquerque to review, approve and send to HUD.

Thank you -

Jolene

From: Herrera, Stephanie M [mailto:Stephanie.M.Herrera@hud.gov]
Sent: Friday, April 05, 2013 12:24 PM
To: Slowen, Jolene M, DFA
Cc: Gonzales, Dolores C., DFA; Padilla, Frank
Subject: NSP Monitoring

Good Morning Jolene,

As part of the Monitoring review, can you please provide me a status as to where the State is with NSP1 & NSP3, please include if the State has decided to transfer NSP to MFA, if so by when? Has the State completed an Amendment for the City of Albuquerque to use program income? If so, when will it be completed? If the State has decided to retain the program income can you please let me know when you plan on having it re-distributed to another area of greatest need?

Thanks,

Stephanie M. Herrera

Community Planning and Development Representative
Office of Community Planning and Development

Department of Housing and Urban Development
500 Gold Avenue SW, Suite 7301
P.O. Box 906
Albuquerque, NM 87103-0906
Ph: (505) 346-7341
Fax: (505) 346-6604
Stephanie.M.Herrera@hud.gov

Herrera, Stephanie M

From: Romero, Stephanie M
Sent: Wednesday, January 23, 2013 3:43 PM
To: "jolenem.slowen@state.nm.us' (jolenem.slowen@state.nm.us)'
Cc: Padilla, Frank
Subject: RE: Environmental Review

Jolene,

Per our conversation this e-mail should have said "can" conduct the environmental review for the Section 108 Loan guarantee program. 24 CFR Section 58.11 (d) states "If a responsible entity, other than a recipient, objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review in accordance with this part or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50". Therefore, HUD has given the State of New Mexico the Authority to conduct the environmental review in accordance with 24 CFR part 58, if the State chooses to do so.

If you have any questions please don't hesitate to ask.

Thanks,
Stephanie

From: Romero, Stephanie M
Sent: Wednesday, January 23, 2013 11:46 AM
To: "jolenem.slowen@state.nm.us' (jolenem.slowen@state.nm.us)'
Cc: Padilla, Frank
Subject: Environmental Review

Good Morning Jolene,

After review of the regulations found at 24 CFR 570.704(d), our office has determined the State shall still conduct the environmental review for the Section 108 Loan Guarantee Program, as discussed on the conference call yesterday. If the State does not have the capacity to conduct the environmental review in accordance with 24 CFR part 58. Please notify our office immediately.

Thanks,

Stephanie Marie Herrera
Community Planning and Development Representative
Office of Community Planning and Development

Department of Housing and Urban Development
500 Gold Avenue SW, Suite 7301
P.O. Box 906
Albuquerque, NM 87103-0906
Ph: (505) 346-7341
Fax: (505) 346-6604
Stephanie.M.Romero@hud.gov

Padilla, Frank

From: Debbie Davis <Ddavis@housingnm.org>
Sent: Monday, July 08, 2013 11:13 AM
To: Padilla, Frank
Cc: Joseph Montoya
Subject: Concerns regarding DFA

Frank – I would like to bring to your attention the problems we have been having with DFA and our NSP contract. First, DFA staff are very non-responsive to MFA. In fact, they will not return phone calls made to them. The only responses we receive are from the contractor for DFA, Charles Kelley.

Second, beginning in March of this year, I started speaking with Charles Kelley regarding our NSP1 contract that was going to expire on June 20, 2013. We had several conversations and he assured me that he had been reminding DFA that we needed to have an amendment or extension to our contract. On June 19, 2013, Sarah Lopez e-mailed and asked me for a copy of the JPA between MFA and DFA because she could not locate one. Copies were sent. On June 24 she asked for copies of the attachments, which were sent to her.

We have not received anything further from DFA, and our **contract expired on June 20, 2013**. Our program is not completed, as we have two homes with NSP fund commitments (one just purchased, one with sale to a homebuyer pending), and we have one more that is in limbo until we get our contract extension. **The purchase agreement for that property has a 7/19/13 closing date.** In addition, our external auditors, including the state auditor, will be auditing NSP this year. They are starting today, and we need to be able to assure them that we will have a contract extension, backdated to June 20, 2013, as soon as possible

The question on the contract was e-mailed this morning to DFA. We requested that they respond via return e-mail and send us an update on the contract amendment, with an assurance on the effective date of June 20, 2013, and when we might expect to receive the extension.

I do not know what else we can do about this contract matter. Thanks.

MFA Debbie Davis, Programs & Initiatives Manager
New Mexico Mortgage Finance Authority
Direct Phone: 505.767.2221
Fax: 505.242.2766

www.housingnm.org

New Mexico Mortgage Finance Authority
344 4th St SW Albuquerque, NM 87102
(505) 843-6880 (800) 444-6880 Toll Free in New Mexico

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
500 Gold Avenue SW, Suite 7301, Albuquerque, New Mexico 87102
P.O. Box 906, Albuquerque, New Mexico 87103-0906

NEW MEXICO STATE OFFICE, REGION VI
OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT

(505) 346-6463
TTY 1.800.877.8339

June 11, 2013

Thomas E. Clifford
Cabinet Secretary
Department of Finance and Administration
Bataan Memorial Building RM 202
Santa Fe, New Mexico 87501

Dear Mr. Clifford:

The U.S. Department of Housing and Urban Development (HUD) is in receipt of e-mails (see attached) from the Department of Finance and Administration, Local Government Division (DFA/LGD), Neighborhood Stabilization Program-3 (NSP3) contractor, the Kaspia Group, Inc. (Kaspia). The e-mails express the concern that several families are at risk of homelessness as a direct result of the inaction of DFA/LGD in providing Kaspia an amendment #4 to their grant agreement.

HUD addressed the issue of the State of New Mexico being untimely in distributing NSP3 program income (Finding #2) in the monitoring letter dated May 9, 2013. The monitoring response dated June 10, 2013 from DFA/LGD stated "it is unclear how homebuyers have been harmed by the fact that a fourth amendment to the Developer agreement has not been finalized." You can see from the attached e-mails how homebuyers have been harmed directly by the amendment to the Developer agreement not being finalized.

The monitoring response from DFA/LGD informed HUD that DFA/LGD is "in the process of finalizing amendments for both the NSP-1 and NSP-3". Addressed in the monitoring letter from HUD to DFA/LGD, the following corrective action was required of DFA "The Program Income Amendment must be issued within the next 30 days and a copy of the amendment must be provided to HUD." Therefore, HUD is requesting that DFA/LGD immediately execute and provide HUD with a copy of the amendment in accordance with the Corrective Action outlined in the Monitoring letter to DFA/LGD to avoid a situation where families in the State of New Mexico become homeless.

If you have any questions, please don't hesitate to contact me at [redacted]

Sincerely,

Frank Padilla
Director

Cc. Ryan Gleason, DFA/LGD Director
Jolene Slowen, DFA/LGD Deputy Director
Keith Gardner, Governor Susana Martinez's Chief of Staff

Enclosure: Kaspia's e-mails

Herrera, Stephanie M

From: Padilla, Frank
Sent: Tuesday, June 11, 2013 9:09 AM
To: Herrera, Stephanie M
Subject: Fw: NSP3 delays

Importance: High

From: Aaron Lohmann [mailto:Aaron@kaspiagroup.com]
Sent: Monday, June 10, 2013 05:37 PM
To: Gonzales, Monica M; Padilla, Frank
Subject: FW: NSP3 delays

PLEASE SEE THE EMAIL BELOW FROM ALISON SHAFER; ONE OF THE REALTORS SELLING THE NSP HOMES.

FYI...I want to make you all aware that due to the State's continued lack of action on NSP3, Kaspia is now facing potential liability and the buyers are left without homes in may cases. This issue is escalating fast! Any help or guidance your department can offer would be greatly appreciated not only by Kaspia but by the homebuyers that we already have under contract. Two of our contracted homebuyers are scheduled to close this week! These families will literally be left homeless since they have already given notice at their current residences, and Kaspia and the State will be in violation of the purchase contracts in place. We are at a total loss as to why this is happening or how this is even acceptable to the State or HUD.

For the record, we still have not received any response from the State to our numerous requests for a budget amendment.

Our corporate counsel, Robert Simon will be forwarding this communication to the State along with another letter requesting amendment #4 tomorrow (6/11/13).

Thank you,

Aaron Lohmann |The Kaspia Group, Inc
President/CEO

3700 Rio Grande NW Suite 6
Albuquerque, NM 87107
[redacted]
www.KaspiaGroup.com | *A Community Development Corp.*

From: "alisonshafernm@aol.com" <alisonshafernm@aol.com>
Date: Monday, June 10, 2013 5:00 PM
To: Aaron Lohmann <aaron@kaspiagroup.com>
Cc: Trista King <Trista@kaspiagroup.com>, Robert Grebe <robert@kaspiagroup.com>, Sheryl McCrary <SherylsHomes@Comcast.net>
Subject: NSP3 delays

Hello Aaron,

After our informational meeting today concerning the ongoing requests from Kaspia to the State for funding for the closings of the NSP3 homes under contract, I had a few thoughts:

The refusal of the state to provide the necessary, contractually agreed to funding for Kaspia to close certain NSP3 properties will cause Kaspia to default on contractual obligations leaving Kaspia and the State of NM open to lawsuits demanding specific performance or for breach of contract.

The State has sent written approval for these buyers. How can the buyers be made to understand that now, after all they have done to purchase these homes, the deal may fall through because of bureaucratic complications?

The buyers of these homes enter into the purchase agreement contract in good faith and Kaspia as the seller agrees to and accepts the contract with that same good faith. The possibility that some of these transactions may not close due to funding issues will not set will with the buyers nor their Realtors. These buyers are depending on everyone to fulfill their contractual obligations so that they can get on with the plans they have been making for weeks of purchasing and moving into their new home. This program's purpose is to facilitate the purchase of these renovated properties by folks who really need the assistance, while hopefully bringing some stabilization to these targeted neighborhoods. As a Realtor, my major concern is for the principals involved, both the buyer and seller. If transactions do not close due to inaction by the State it will mean a black eye for the whole program, including the State, Kaspia, and perhaps Omni Village Realty. In a profession where one is judged on performance, a situation such as this could damage the reputation of Omni Village Realty and its associates. I definitely don't want that to happen...we take great care to provide the best service possible to our customers, to be honest and truthful, deal in good faith, and to build a good reputation which should not be besmirched by the actions of another entity.

It also is possible that the "locks" on the loans for these homes may expire, and with the interest rates rising, buyers who are currently qualified to purchase may find they can no longer afford to do so, especially any that fall into the "20%" assistance bracket since they would probably be those most likely to be affected.

I don't have to tell you that additionally, these homes that are sitting vacant are in danger of being broken into and vandalized. The sooner they are occupied, the better.

Yet another issue is that of the homes we currently have "active" in the MLS and on the market. We will need to make a decision very soon as to whether to put them into "temporary withdraw" status since Kaspia at this time apparently cannot sign a purchase agreement in good faith.

I have notified the selling Realtors for the following properties that there may be an indefinite delay in closing:

844 Loma Hermosa, scheduled to close 6/14/13

10801 Rio Puerco, scheduled to close 6/13/13 but buyers will be requesting an extension (which the seller cannot in good faith sign since the funding is not available to Kaspia for closing). I also represent the buyers on this transaction.

1161 Jenaro, scheduled to close 6/27/13.

I urge you to inform the State that we are looking at a myriad of problems, and perhaps legal action if it does not live up to its contractual obligations.

I am hopeful that all this will soon be rectified so that we can fulfill obligations, make buyers happy, and get on with the business of trying to improve the state of the community through home ownership.

Please let me know if there is anything I can do to further the cause.

Sincerely,
Alison Shafer
Associate Broker
Omni Village Realty
[redacted]

Herrera, Stephanie M

From: Padilla, Frank
Sent: Tuesday, June 11, 2013 9:07 AM
To: Herrera, Stephanie M
Subject: Fw: NSP3 Funding

Importance: High

From: Aaron Lohmann [mailto:Aaron@kaspiagroup.com]
Sent: Monday, June 10, 2013 05:44 PM
To: Gonzales, Monica M; Padilla, Frank
Subject: FW: NSP3 Funding

Here's another one...Please read Sheryl's email below.
Thank you for your consideration,

Aaron Lohmann |The Kaspia Group, Inc
President/CEO

3700 Rio Grande NW Suite 6
[redacted]
www.KaspiaGroup.com | *A Community Development Corp.*

From: Sheryl McCrary <SherylsHomes@Comcast.net>
Reply-To: Sheryl McCrary <SherylsHomes@Comcast.net>
Date: Monday, June 10, 2013 5:41 PM
To: Aaron Lohmann <aaron@kaspiagroup.com>
Subject: NSP3 Funding

I am very concerned that we have not received funding for the program. I have 4 contracts for closings on our NSP homes. The closing dates are looming closer and closer. I have another offer, but I am afraid to have you accept it! Should I take homes off the market?

As your agent, I am fearful that Kaspia could be sued by the buyer for not closing these homes. The Purchase Agreement clearly states that not closing would be grounds for a lawsuit, called Specific Performance. I also do not want Kaspia or the program to get a bad recommendation. Realtors and people do talk. I have spent a lot of time speaking to realtors and people about the virtues of this program. I hate for that to go down the toilet. We have built a good reputation and put out a superior product while helping people who really need a home.

I am fearful that the buyers who are waiting for that close date to come will have to spend additional money they don't have on rent or motel. These people don't have that kind of money! Remember they are low income! Most, give notice to the landlord and have to be out by the agreed time. If we don't close, where do they go?

When the offers were written, they were written in good faith that the closing would occur in a timely manner. The State has had these contracts all along, why are they stalling with releasing funding? The homes are sitting there finished, ready for the new owners. The risk of being vandalized is high, and Kaspia will have to foot the bill for that.

My buyer for 1161 Jenaro Rd SW has given her landlord notice. He already has someone lined up to move in. We are due to close June 27th. What am I to tell her? It's going to break her heart! For once in her life something good was happening to her, a real miracle. Now, I have to tell her that it's not happening because someone can't take a moment to do the funding!

SHERYL MCCRARY
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